



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
CARIBBEAN ENVIRONMENTAL PROTECTION DIVISION
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031815

Manuel Mata
President
AES Puerto Rico, L.P.
P. O. Box 1890
Guayama, Puerto Rico 00785

**Re: AES-PR Coal-Fired Power Plant and Marine Cargo Handling Dock Facility
Administrative Order on Consent
Docket Number CWA-02-2015-3102**

Dear Mr. Mata:

This refers to the Administrative Order on Consent (AOC), Docket Number CWA-02-2015-3102, developed between representatives from AES Puerto Rico, L.P. and the U.S. Environmental Protection Agency (EPA). Enclosed please find a copy of the executed AOC, which incorporates the final injunctive relief agreed by AES and EPA.

If you have any questions regarding this AOC, please contact Mr. José A. Rivera, Multimedia Permits and Compliance Branch, at (787) 977-5842, or at rivera.jose@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Jose C. Font".

Jose C. Font
Director
Caribbean Environmental Protection Division

Enclosure

cc: Wanda García, EQB (via e-mail w/ enclosure)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

In the Matter of:

AES PUERTO RICO, L.P.
P. O. Box 1890
Guayama, Puerto Rico 00785

**AES-PR Coal-Fired Power Plant and Marine Cargo
Handling Dock Facility**
Road PR-3, Km. 142, Jobos Ward
Guayama, Puerto Rico 00784

2008 MSGP Tracking Number PRR05BL65

Proceeding pursuant to Sections 308(a) and 309(a) of
the Clean Water Act, 33 U.S.C. §§ 1318(a) and 1319(a).

**ADMINISTRATIVE
ORDER ON CONSENT**

**DOCKET NUMBER
CWA-02-2015-3102**

I. PRELIMINARY STATEMENT

1. This Order is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) pursuant to Sections 308(a) and 309(a) of the Clean Water Act ("CWA" or the "Act"), 33 U.S.C. §§ 1318(a) and 1319(a).
2. The Administrator has delegated the authority to take these actions to the Regional Administrator of Region 2, who in turn, has delegated such authority to the Director of the Caribbean Environmental Protection Division.

II. STATUTORY AND REGULATORY AUTHORITIES

EPA contends that:


3. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), provides in part that "[e]xcept as in compliance with [CWA Section 402], the discharge of any pollutant by any person shall be unlawful."
4. Section 402 of the CWA, 33 U.S.C. § 1342, defines the National Pollutant Discharge Elimination System (NPDES) as the national program for, among other things, issuing and enforcing discharge permits.

5. Section 402(a)(1) of the CWA, 33 U.S.C. § 1342(a)(1), provides that "the Administrator may, after opportunity for public hearing, issue a permit for the discharge of any pollutant. . . . upon condition that such discharge will meet . . . such requirements as the Administrator determines are necessary to carry out the provisions of the [CWA]."
6. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), requires a NPDES permit with respect to a storm water discharge associated with industrial activity.
7. Section 402 of the CWA authorizes the Administrator to promulgate regulations for the implementation of the NPDES requirements.
8. Pursuant to the CWA, on April 1, 1983, EPA promulgated regulations to implement the NPDES program, under EPA Administered Permit Programs: the NPDES, at 40 C.F.R. § 122, as amended.
9. Pursuant to the NPDES regulations at 40 C.F.R. § 122.5(b), the NPDES program requires permits for the discharge of any pollutant from any point source into waters of the United States.
10. Pursuant to the NPDES regulations at 40 C.F.R. § 423.15, an operator of a steam electric power plant is required to comply with the effluent limitations developed for the steam electric point source category.
11. Pursuant to the NPDES regulations at 40 C.F.R. §§ 122.26(a)(1)(ii) and 122.26(b)(14), operators are required to obtain a NPDES permit for storm water discharges associated with industrial activity.
12. The CWA and its implementing NPDES regulations, as well as the applicable NPDES permits contain the following definitions:
 - a. "Best Management Practices" or "BMPs" mean schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of "waters of the United States." BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage, pursuant 40 C.F.R. § 122.2;
 - b. "Bi-Monthly" means every two (2) months;
 - c. "discharge of a pollutant" means any addition of any pollutant to navigable waters and/or waters of the United States from any point source. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), and 40 C.F.R. § 122.2;

- d. "facility" means any NPDES point source or any other facility or activity (including land or appurtenances thereto) that is subject to the regulations of the NPDES program. 40 C.F.R. § 122.2;
- e. "navigable waters" means the waters of the United States, including the territorial seas. Section 502(7) of the CWA, 33 U.S.C. § 1362(7); "Waters of the United States" means all waters such as lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, among others, and their tributaries. 40 C.F.R. § 122.2;
- f. "industrial activity" means the 11 categories of industrial activities included in the definition of "storm water discharges associated with industrial activity" as defined in 40 C.F.R. §§ 122.26(b)(14)(i)-(xi);
- g. "non-structural BMP" means best management practices that generally consist of processes, prohibitions, procedures, and schedules of activities that prevent pollutants associated with industrial activity from contacting with storm water discharges and authorized non-storm water discharges. They are considered low technology, cost-effective measures, and do not involve construction and installation, and usually work by changing behavior, persuasion and/or economic instruments;
- h. "owner" or "operator" means the owner or operator of any facility or activity subject to regulation under the NPDES program. 40 C.F.R. § 122.2;
- i. "operator" means any entity with a storm water discharge associated with industrial activity that meets either of the following two criteria as defined in Appendix A of the 2008 NPDES Multi-Sector General Permit for Storm Water Discharges Associated with Industrial Activity:
 - 1) the entity has operational control over industrial activities, including the ability to modify those activities; or
 - 2) the entity has day-to-day operational control of activities at a facility necessary to ensure compliance with the permit (e.g., the entity is authorized to direct workers at a facility to carry out activities required by the permit);
- j. "person" means an individual, corporation, partnership or association. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2;
- k. "point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may

be discharged. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2;

- l. "pollutant" includes solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal and agricultural waste discharged into water. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2;
 - m. "Standard Operating Procedure(s)" or "SOP(s)" means the established or prescribed method(s) prepared by Respondent to be followed routinely for the performance of designated environmental compliance activities, operations, or in designated situations;
 - n. "storm water associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. 40 C.F.R. §§ 122.2 and 122.26(b)(14);
 - o. "structural BMP" means the fixed, permanent physical structures and equipment requiring planning, design construction and maintenance that are designed to remove pollutants from storm water runoff, reduce downstream erosion, provide flood control and promote groundwater recharge; and
 - p. "Substantial Completion" means, when used in reference to Structural BMPs and construction projects required under this Order, the date, as certified by a Licensed Engineer in charge of a construction project who is authorized to conduct the engineering profession in the Commonwealth of Puerto Rico, when the Structural BMP or construction project or specified part thereof is sufficiently completed in accordance with the design drawings and specifications, such that the project or specified part thereof can be used to accomplish the purposes for which it was intended.
13. On September 29, 2008, EPA re-issued the NPDES Multi-Sector General Permit for Storm Water Discharges Associated with Industrial Activity (MSGP). The MSGP became effective on September 29, 2008, and expired on September 29, 2013. Pursuant to 5 U.S.C. § 558(c) and 40 C.F.R. § 122.6(a), coverage under the MSGP was administratively extended for those operators who obtained coverage under the MSGP prior to its expiration date (September 29, 2013).
14. The MSGP established Notice of Intent (NOI) requirements, development and implementation of Storm Water Pollution Prevention Plans (SWPPP), inspections, monitoring, reporting, recordkeeping and other special and general conditions.

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15. The MSGP requires a facility operator who seeks coverage under the MSGP to submit a complete NOI form in order to obtain authorization to discharge storm water associated with industrial activity.
 16. The MSGP requires the selection, design, and construction/implementation of control measures, such as non-structural and structural BMPs, to meet the non-numeric effluent limits contained in the MSGP (Section 2.1). The selection, design, installation, and implementation of the control measures must be in accordance with good engineering practices and manufacturer's specifications.
 17. Part 2.1.2.1 (Minimize Exposure) of the MSGP requires the operator to minimize the exposure of material storage areas (i.e., loading and unloading, storage) to rain and runoff by either locating these industrial materials and activities inside or protecting them with storm resistant coverings. The MSGP does not recommend significant enlargement of impervious surface areas.
 18. Part 2.1.2.2 (Good Housekeeping) of the MSGP requires the operator to keep clean all exposed areas that are potential sources of pollutants, using such measures as sweeping at regular intervals.
 19. Part 2.1.2.3 (Maintenance) of the MSGP requires the operator to regularly maintain and repair systems to avoid situations that may result in releases of pollutants in stormwater discharged to receiving waters.
 20. Part 2.1.2.5 (Erosion and Sediment Controls) of the MSGP requires the operator to stabilize exposed areas and contain runoff using structural and/or non-structural BMPs to minimize on-site erosion and sedimentation, and the resulting discharge of pollutants. Place flow velocity dissipation devices at discharge locations and within outfall channels where necessary to reduce erosion and/or settle out pollutants.
 21. Part 2.1.2.6 (Management of Runoff) of the MSGP requires the operator to divert, infiltrate, reuse, contain, or otherwise reduce storm water runoff, to minimize pollutants in the discharges.
 22. Part 2.1.2.12 (Dust Generation & Vehicle Tracking of Industrial Materials) of the MSGP requires the operator to minimize generation of dust and off-site tracking of raw, final, or waste materials.
 23. Part 3.2 (Conditions Requiring Review to Determine if Modifications Are Necessary) of the MSGP requires the operator to review the selection, design, installation, and implementation of control measures to determine if modifications are necessary to meet the effluent limits in the MSGP when the average of four (4) quarterly sampling results exceeds an applicable benchmark.

24. Part 7.1 (Reporting Monitoring Data to EPA) of the MSGP requires the operator to submit all monitoring data collected pursuant to Parts 6.2 and 6.3 of the MSGP to EPA using EPA's online eNOI system (www.epa.gov/npdes/eNOI) no later than thirty (30) days (email date or postmark date) after the operator has received the complete laboratory results for all monitored outfalls for the reporting period. If the operator cannot access eNOI, paper reporting forms must be submitted by the same deadline in accordance with Part 7.6.1 of the MSGP.
25. Part 8.O.4.1 (Fugitive Dust Emissions) of the MSGP requires the operator to minimize fugitive dust emissions from coal handling areas.
26. Part 8.O.4.11 (Ash Loading Areas) of the MSGP requires the operator to reduce or control the tracking of ash and residue from ash loading areas, and to clear the ash building floor and immediately adjacent roadways of spillage, debris, and excess water before departure of each loaded vehicle.
27. Part 8.O.4.12 (Areas Adjacent to Disposal Ponds) of the MSGP requires the operator to minimize contamination of surface runoff from areas adjacent to disposal ponds, reduce ash residue that may be tracked on to access roads traveled by residue handling vehicles, and reduce ash residue on exit roads leading into and out of residue handling areas.
28. Part B.1 (Duty to Comply) of the MSGP requires the operator to comply with all conditions of the MSGP. Any permit noncompliance constitutes a violation of the CWA and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.
29. Part B.4 (Duty to Mitigate) of the MSGP requires the operator to take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.
30. Section 308(a)(A) of the CWA provides that "[w]henever required to carry out the objective of . . . [CWA Section 402] the Administrator shall require the owner or operator of any point source to (i) establish and maintain such records, (ii) make such reports, (iii) install, use, and maintain such monitoring equipment or methods (including where appropriate, biological monitoring methods), (iv) sample such effluents (in accordance with such methods, at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (v) provide such other information as [the Administrator] may reasonably require."
31. Section 309(a)(3) of the CWA provides that "[w]henever on the basis of any information available . . . the Administrator finds that any person is in violation of [CWA Sections 301 and 308], or is in violation of any permit condition or limitation implementing any of such sections in a permit issued under [Section 402 of the Act, the Administrator] shall issue an order requiring such person to comply with such section...."

32. Section 309(a)(5)(A) of the CWA provides that “[a]ny order issued under [CWA Section 309] shall state with reasonable specificity the nature of the violation, and shall specify a time for compliance . . . taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.”
33. EPA is the agency within the Commonwealth of Puerto Rico with authority to administer the federal NPDES program. EPA maintains enforcement authority for violations of the CWA and its implementing regulations.

III. JURISDICTIONAL FINDINGS

EPA makes the following findings of fact:

34. AES Puerto Rico, L.P. (Respondent) is a corporation organized under the laws of the State of Delaware, United States of America. Respondent is registered with the Puerto Rico Department of State under registration number 11062.
35. Respondent is the owner and operator, as defined at 40 CFR §122.2, of a coal-fired steam power plant and a marine cargo handling dock facility (hereinafter jointly referred as the “Facility”) located at Road PR-3, Km. 142, Jobos Ward, Guayama, Puerto Rico 00784.
36. The operations at the coal-fired steam power plant are best described by the Standard Industrial Classification (SIC) Code 4911. This classification covers establishments primarily engaged in the generation, transmission, and/or distribution of electricity or gas or steam.
37. The operations at the marine cargo handling dock facilities are best described by SIC Code 4491. This classification includes docks, piers, terminals, staging areas, or in-transit areas, in which cargo loading or unloading operations take place.
38. 40 C.F.R. § 122.26(b)(14)(vii) addresses those facilities identified with SIC Code 4911.
39. 40 C.F.R. § 122.26(b)(14)(viii) addresses those facilities identified with SIC Code 4491.
40. Respondent’s operations at the Facility are classified as “industrial activity” as defined in 40 C.F.R. §§ 122.26(b)(14)(vii) and (viii).
41. Respondent is a “person” pursuant to Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
42. Respondent’s Facility is a “point source” pursuant to Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

43. Respondent "discharges pollutants" from the coal-fired steam power plant into wetlands immediately adjacent to Las Mareas Bay.
44. Respondent "discharges pollutants" from the marine cargo handling dock facility into Las Mareas Bay.
45. The wetlands adjacent to Las Mareas Bay are waters of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
46. Las Mareas Bay is a navigable water of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
47. Respondent is subject to the provisions of the CWA, 33 U.S.C. § 1251, *et seq.*, and the applicable NPDES permit application regulations found at 40 C.F.R. Part 122. Respondent was required to apply for and obtain NPDES permit coverage for the Facility's discharges of pollutants into waters of the United States pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

IV. FINDINGS OF FACTS

EPA makes the following findings of fact:

48. Respondent began operations at the Facility on or about November 2002.
49. On July 20, 2011 and July 26, 2011, an EPA Region 2 enforcement officer conducted a Compliance Evaluation Inspection (CEI) of the Facility. The purpose of the Inspection was to determine Respondent's compliance with the CWA, the NPDES regulations, and the MSGP. The findings of the CEI were summarized in the NPDES Water Compliance Inspection Report (CEI Report), dated October 3, 2011.
50. Based on the findings of the CEI and further investigations, EPA found Respondent to be in violation of the CWA and the applicable NPDES regulations for its discharges of pollutants into waters of the United States without NPDES permit coverage, and for its failure to apply for a NPDES permit.
51. On December 16, 2011, EPA issued to Respondent an Administrative Compliance Order (ACO), Docket Number CWA-02-2012-3100, in an effort to bring Respondent into compliance with the CWA and its implementing NPDES regulations.
52. The ACO included twenty eight (28) Ordered Provisions, including compliance dates. Respondent has submitted to EPA nineteen (19) Bi-Monthly Status Reports between December 22, 2011 and January 28, 2015. Respondent reported and provided documentation of the actions taken for the required period, including photo-documentation and compliance cost.

53. By letter dated May 5, 2013, EPA approved the structural BMPs matrix and schedule included in Respondent's ninth Bi-Monthly Status Report, dated May 15, 2013, in accordance with Provision 7 of the ACO.
54. On August 29, 2013, Respondent filed a modification to the NOI form to seek coverage under the MSGP for the storm water discharges associated with industrial activity from the Facility and the marine cargo handling dock into waters of the United States. Respondent obtained MSGP coverage beginning on September 29, 2013.
55. Based on an EPA Region 2 enforcement officer's review of the eleventh and twelve Bi-Monthly Status Reports, dated September 30, 2013 and November 21, 2013, respectively, Respondent notified EPA of its completion of the construction of the structural BMPs, the removal of construction BMPs, and the clean-up of construction areas, including the contractor compound areas, at the Facility. Also, Respondent notified EPA that it had not completed the cleaning/maintenance of the coal pile runoff pond.
56. On June 19, 2014, two (2) EPA Region 2 enforcement officers conducted an Enforcement Case Support Inspection (ECSI) of the Facility. The purpose of the ECSI was to determine Respondent's compliance with the ACO and the MSGP.
57. The findings of the ECSI were summarized in the NPDES Water Compliance Inspection Report (ECSI Report), dated August 26, 2014. Respondent received a copy of the ECSI Report on December 2, 2014.
58. On January 28, 2015, Respondent provided written notice to EPA that it had completed the cleaning/maintenance of the coal pile runoff pond, implemented non-structural and structural BMPs, completed the preparation of the SWPPP, and conducted other activities to address the findings of the ECSI Report and the AOC's pending actions.
59. Based upon an EPA Region 2 enforcement officer walkthrough of the Facility on January 28, 2015, and further review of Respondent's submittals, EPA found Respondent to be in non-compliance with the MSGP and ACO, as set forth below:
- a. failure to provide a Final Progress Report indicating and documenting the implementation of the non-structural BMPs and structural BMPs at the Facility, per the EPA May 5th, 2013 letter;
 - b. Part 2.1.2.5 (Erosion and Sediment Controls) – lack of soil stabilization in areas near the coal pile, limestone dome, and coal pile runoff pond;
 - c. Part 2.1.2.5 (Erosion and Sediment Controls) – lack of installation and/or replacement of the silt fence in the perimeter of the coal storage piles and coal handling areas;

- d. Part 2.1.2.12 (Dust Generation & Vehicle Tracking of Industrial Materials) – lack of a dust and fugitive emissions control plan for areas in which ashes are handled (e.g., Agremax™ storage pile);
- e. Part 3.2 (Conditions Requiring Review to Determine if Modifications Are Necessary) – did not address the exceedances of the applicable benchmarks (e.g., aluminum and iron) for the period up to June 2014 concerning storm water discharges through outfalls 001 and 002;
- f. failure to prepare and submit the comprehensive site inspection reports pursuant to Part 4.3.2 of the MSGP for the December 13, 2012 and December 19, 2013 comprehensive site inspections; and
- g. Part 7.1 (Reporting Monitoring Data to EPA) – failure to submit MSGP discharge monitoring report forms (MDMR forms) all monitoring data collected since Respondent obtained MSGP coverage on September 29, 2013.

V. CONCLUSIONS OF LAW

EPA concludes:

- 60. As described in Paragraphs 48-58 above, EPA finds Respondent in violation of certain requirements of the MSGP, which require implementation of measures to bring the Facility into compliance with the CWA.
- 61. Respondent's non-compliance is subject to an enforcement action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

VI. CONSENT

- 62. Respondent and EPA have negotiated this Order in good faith, which Order is fair, reasonable, and consistent with the goals of the CWA.
- 63. Respondent neither admits nor denies the factual allegations contained herein. Without admitting liability for the violations asserted in this Order or the factual allegations set forth therein, Respondent admits that EPA has the jurisdiction and authority under Section 309(a) of the CWA to issue this Order and agrees to be bound by this Order.
- 64. The Ordered Provisions (Part VII) of this Order shall be binding upon Respondent, its officers, directors, agents, servants, authorized representatives and successors and assigns.

VII. ORDERED PROVISIONS

In consideration of the above Statutory and Regulatory Authorities, Jurisdictional Findings, and Findings of Fact, and pursuant to the authority in Section 309 of the CWA, 33 U.S.C. § 1319, EPA has determined that compliance with the following requirements is reasonable, and Respondent so agrees. The Ordered Provisions contained in the ACO, Docket Number CWA-02-2012-3100, are superseded by the Ordered Provisions contained hereinafter.

EPA HEREBY ORDERS AND RESPONDENT HEREBY CONSENTS THAT:

65. **Except as otherwise indicated in this Order**, at all times Respondent shall comply with the CWA, its NPDES implementing regulations, the MSGP, and any NPDES permit Respondent subsequently applies for and obtains.
66. **Within thirty (30) calendar days of the Effective Date of this Order**, Respondent shall complete and submit the MDMR forms for the benchmark monitoring conducted pursuant to the requirements of the ACO and MSGP.
67. **Within thirty (60) calendar days of the Effective Date of this Order**, Respondent shall prepare, for EPA review and approval, a storm water sampling SOP (SW Sampling SOP) to conduct, document and submit storm water sampling data reports according to the quarterly visual assessment of storm water discharges and benchmark monitoring requirements in the MSGP. Respondent shall begin implementing the SW Sampling SOP upon its submission to EPA for review and approval. Any changes required to the SW Sampling SOP by EPA shall be made by Respondent within thirty (30) calendar days of EPA's request and be fully implemented at that time.

The SW Sampling SOP shall at a minimum:

- a. establish procedures for the collection, analysis, documentation, recordkeeping, and reporting of storm water discharges;
- b. include, as an appendix, a flow chart describing the key features of the SW Sampling SOP that are relevant to conducting quarterly visual assessments and benchmark monitoring at each permanent sampling point;
- c. feature a map depicting all permanent sampling locations;
- d. describe the use and management of rain gauge data pursuant to the Rain Gauge SOP, which was developed by Respondent pursuant to the ACO;
- e. describe the sampling equipment, preservation of samples, approved laboratory methods, and the use and completion of a Chain of Custody Record (referred herein as "CCR") according to the MSGP; and

- f. include hands-on and room training for the Pollution Prevention Team members, qualified personnel, and any other employees and contractors responsible for supervision and performance of storm water sampling.
68. **Upon the Effective Date of this Order and for a period of one year**, Respondent shall conduct benchmark monitoring and analyze samples according to Part 6.1.3 (measurable storm event), Part 6.1.4 (sample type), Part 6.1.5 (adverse weather condition), Part 6.1.7 (monitoring periods), Part 6.2.1.1 (applicability of benchmark monitoring), Part 6.2.1.2 (benchmark monitoring schedule), Part 8.O.7 (sector-specific benchmark for steam electric power generating facilities) and Part 8.Q.6 (sector-specific for water transportation) of the MSGP. Also, Respondent shall:
- a. monitor at least once at the permanent sampling points 001, 002, and 003 (SP-001, SP-002, and SP-003, respectively) in each of the following 3-month intervals: January 1 – March 31; April 1 – June 30; July 1 – September 30; and October 1 – December 31;
 - b. analyze the samples for total aluminum, total iron, total lead and total zinc;
 - c. document monitoring activities and laboratory reports for each sampling point; and
 - d. prepare MDMR forms within thirty (30) days of receiving the laboratory results. Respondent shall use the MDMR available at the EPA's web site at <http://water.epa.gov/polwaste/npdes/stormwater/>.
69. **Until Termination of this Order**, Respondent shall prepare and submit MDMR referred to in Paragraph 67 above, in accordance with the schedules established therein.
70. **Within thirty (30) calendar days of the Effective Date of this Order**, Respondent shall submit a detailed report concerning the implementation of each of the action items included in the BMPs Matrix table and schedule, which EPA approved in its May 5, 2013 letter. Respondent shall supplement this information with documentation, which shall include at a minimum, photo-documentation and an updated BMPs Matrix table.
71. **Within thirty (30) calendar days of the Effective Date of this Order**, Respondent shall prepare and submit the comprehensive site inspection reports pursuant to Part 4.3.2 of the MSGP for the December 13, 2012 and December 19, 2013 comprehensive site inspections.
72. **Within sixty days (90) calendar days of the Effective Date of this Order**, Respondent shall prepare and submit a detailed Plan of Action (POA), for EPA review and approval, and subsequent implementation by Respondent, which shall include at a minimum:

- a. a review and revision of the selection, design, installation, and implementation of Respondent's control measures in accordance with Part 3 of the MSGP;
 - b. a description of each action to be taken to comply with Part 3.2 (Conditions Requiring Review to Determine if Modifications Are Necessary) and Part 6.2.1.2 (Benchmark Monitoring Schedule) of the MSGP, which requires Respondent to review the selection, design, installation, and implementation of control measures to determine if modifications are necessary to meet the effluent limits in the MSGP. Specifically, Respondent shall perform this review for aluminum and iron; and
 - c. a plan for the minimization and control of dust (including fugitive dust) from coal combustion residuals and/or AgremaxTM at the Facility and during transport (hereinafter, the "Dust Control Plan"). The Dust Control Plan shall include site management procedures such as wetting the AgremaxTM storage pile at the Facility to ensure compliance with applicable MSGP requirements relating to dust control, and an implementation schedule.
73. **Respondent's POA, and its amendments thereto**, shall be signed and certified by a licensed engineer who is authorized to conduct the engineering profession in the Commonwealth of Puerto Rico. This licensed engineer shall have demonstrated expertise in design and implementation of fugitive dust minimization and controls; engineering practices for soil stabilization practices, storm water management, and pollution prevention.
74. **Within thirty (30) days or by such other deadline approved by EPA**, Respondent shall modify the POA to address EPA's comments. Respondent shall, upon approval by EPA, implement the POA. Defendants shall proceed to take any actions required by the approved POA, in accordance to the schedule contained therein, as approved in writing by EPA.
75. **No later than sixty (60) days after the Effective Date of this Order**, Respondent shall create, in addition to the existing Environmental Coordinator Position, a Storm Water Compliance Coordinator (Coordinator) position at the Facility. The Coordinator shall be:
- a. an employee of Respondent who has the education, experience and skills to manage compliance with storm water management requirements including the control measures and BMPs at the Facility, with the authority to direct Respondent's employees in connection with storm water compliance activities;
 - b. responsible for: (i) overseeing the preparation, amendment, and certification of the SWPPP; (ii) providing and/or coordinating applicable environmental training to the Facility's personnel; (iii) conducting quarterly

and routine inspections; (iv) assisting employees and/or contractors with the installation, maintenance and improvement of non-structural and structural BMPs; (v) conducting comprehensive site inspections; (vi) determining if appropriate actions have been timely made to address compliance violations or to make improvements to BMPs; (vii) coordinating the pick-up and analysis of storm water samples; (viii) monitoring compliance with this Order; and (ix) preparing and submitting Reports to EPA; and

- c. an advisor to Respondent's officers with respect to compliance with the MSGP and this Order.

76. **No later than sixty (60) days after the Effective Date of this Order**, Respondent shall submit a certification stating that Respondent created the position of, and hired, the Coordinator referenced in Paragraph 75, above.

77. **Until Termination of this Order**, Respondent shall prepare and submit Quarterly Progress Reports (QPR) that describe the current status and progress of Respondent's actions taken to comply with the provisions of this Order. Respondent shall:

- a. submit each QPR to EPA no later than the fifteenth (15th) day of the month following the month that is the subject of the report; and
- b. indicate in the QPR, at a minimum, the following:
 - 1) the specific activities undertaken by Respondent relating to the completion of work required under this Order, including, but not limited to, the expected date for the Substantial Completion, and identification of those requirements which have been accomplished since the previous QPR, including the dates of Substantial Completion of any of the remedial actions, capital improvements, or any other actions identified in this Order;
 - 2) any impediments Respondent encountered in meeting the compliance schedules, the steps that Respondent has taken to overcome such impediments, and the steps that Respondent will take to overcome such impediments, including the anticipated dates by which such steps will be taken; and
 - 3) a cost report detailing the expenses incurred as of the date of the QPR.

If Respondent has already submitted a deliverable to EPA, Respondent shall reference that deliverable in the QPR and its date of submission, instead of submitting another copy of that deliverable to EPA.

VIII. GENERAL PROVISIONS

78. Any questions concerning this Order should be directed to José A. Rivera, Senior Environmental Engineer, Multimedia Permits and Compliance Branch, Caribbean Environmental Protection Division, at (787) 977-5842 / rivera.jose@epa.gov.
79. Any documents to be submitted by Respondent as part of this Order shall be sent by certified mail or its equivalent, and shall be signed by an authorized representative of the respective entity (see 40 C.F.R. § 122.22), and shall include the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

80. All documents required to be submitted under this Order shall be sent to the following addresses:

Director, Water Quality Area
Environmental Quality Board
P. O. Box 11488
San Juan, Puerto Rico 00910,

and

Chief, Multimedia Permits and Compliance Branch
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency, Region 2
City View Plaza II, Suite 7000
48 RD. 165 Km. 1.2
Guaynabo, Puerto Rico 00968-8069.

81. Respondent waives any and all claims for relief and otherwise available rights to administrative or judicial review of any issue of law or fact, or any other provision, set forth in this Order, including, but not limited to, any right of judicial review of this Order under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.
82. Notwithstanding any other provision of this Order, Respondent reserves its rights to contest liability in any subsequent action filed by EPA to seek penalties for a

violation of this Order, and reserves its rights to contest liability in any subsequent action for any violations EPA has alleged in this Order. Respondent reserves all defenses to any action asserted or taken by EPA under its reservations in this Order or otherwise.

83. This Order does not constitute a waiver from compliance with, or a modification of, the effective terms and conditions of the CWA, its implementing regulations, or any applicable permit, which remain in full force and effect. This Order is an enforcement action taken by EPA to ensure swift compliance with the CWA. Issuance of this Order shall not be deemed an election by EPA to forego any civil or criminal actions for penalties, fines, imprisonment, or other appropriate relief under the CWA.
84. Notice is hereby given that should EPA commence an action in a United States District Court for a violation of any Ordered Provision of this Order, Respondent may be subject to: (1) civil penalties up to \$37,500 per day for each day of violation, pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d); and/or (2) injunctive relief, pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), as imposed by the Court.
85. If any provision of this Order is held by a court of competent jurisdiction to be invalid, any surviving provisions shall remain in full force and effect.

IX. DELAY OF PERFORMANCE/FORCE MAJEURE

86. "Force Majeure," for purposes of this Order, is any event entirely beyond the control of Respondent or any entity controlled by Respondent that delays or prevents performance of any obligation under this AOC, notwithstanding Respondent's best efforts to avoid the delay. The best efforts requirement includes using best efforts to anticipate any such event and to minimize the delay caused by any such event to the greatest extent practicable. Examples of events that are not force majeure events include, but are not limited to, increased costs or expenses of any work to be performed under this AOC, Respondent's financial or business difficulties, and normal inclement weather.
87. Unless otherwise specified, if any event may occur or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a force majeure, Respondent shall notify by telephone the EPA contact identified in Paragraph 78 of this Order, or, in his absence, the Multimedia Permits and Compliance Branch Chief identified in Paragraph 79, Caribbean Environmental Protection Division, EPA, Region 2, within four (4) business days of when Respondent knew or reasonably should have known that the event might cause a delay. Within fifteen (15) calendar days thereafter, Respondent shall provide in writing the reasons for the delay, the anticipated duration of the delay, the measures taken or to be taken to prevent or minimize the delay, and a timetable by which those measures will be implemented. Respondent shall exercise its best

efforts to avoid or minimize any delay and any effects of a delay. Failure to comply with the notice requirement of this paragraph shall preclude Respondent from asserting any claim of force majeure.

88. If EPA agrees that an actual or anticipated delay is attributable to force majeure, the time for performance of the obligation shall be extended by written agreement of the parties. An extension of the time for performing an obligation directly affected by the force majeure event shall not, of itself, extend the time for performing a subsequent obligation. The time of performance of any subsequent obligation that is directly impacted by an extension of time granted for an obligation due to a force majeure event shall be extended at the request of the Respondent. EPA will review Respondent's request and will provide a new set of compliance date(s) in writing, if deemed necessary.
89. Respondent shall have the burden of demonstrating, by a preponderance of the evidence, that the actual or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay was or will be warranted under the circumstances, that Respondent did exercise or is using its best efforts to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of this section.

X. TERMINATION AND SATISFACTION

90. After Respondent has complied with all the Ordered Provisions of this Order, Respondent may serve upon EPA a Request for Termination, stating that Respondent has satisfied those requirements, together with all necessary supporting documentation.
91. Following receipt by EPA of Respondent's Request for Termination, within thirty (30) calendar days or at another mutually agreed upon time, EPA and Respondent shall confer informally concerning the Request and any disagreement that EPA and Respondent may have as to whether Respondent has satisfactorily complied with the requirements for termination of this Order. If EPA agrees, it will close-out this Order by informing Respondent in writing of such decision. However, the determination to close-out this Order shall be solely in the discretion of EPA.
92. Any violation of this Order may be grounds for EPA to terminate this Order in its sole discretion.

XI. EFFECTIVE DATE AND EFFECT OF CONSENT

93. This Order shall become effective upon the date of execution by the undersigned Director, Caribbean Environmental Protection Division, Region 2, EPA.

94. Each undersigned signatory to this Order certifies that he is duly and fully authorized to enter into or ratify this Order and all of the applicable terms and conditions set forth herein.
95. Respondent and EPA shall bear their own costs of this Order, including attorneys' fees.
96. Respondent hereby consents to the issuance of this Order and agrees to be bound thereby.
97. Nothing in this Order limits Respondent's obligations to comply with the requirements of all applicable federal and Commonwealth of Puerto Rico laws and regulations.

FOR AES PUERTO RICO, L.P.:

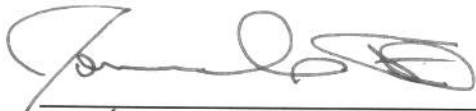


MANUEL MATA

Plant Manager
AES PUERTO RICO, L.P.
P. O. Box 1890
Guayama, Puerto Rico 00785

Dated: 3/18/15

FOR UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 2:



JOSÉ C. FONT

Director
Caribbean Environmental Protection Division
Environmental Protection Agency, Region 2
City View Plaza II, Suite 7000
48 RD. 165 Km. 1.2
Guaynabo, Puerto Rico 00968-8069

Dated: 3-18-15